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Insert to statement of Senator Strom Thurmond (D-SC) on Senate floor, 1959 January 8

Strom Thurmond

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Mr. President:

In discussing the history of limitation of debate in the United States Senate, many newspapers and newspaper columnists appear to be under the impression that there existed a limitation of debate in the United States Senate between the period 1789 and 1806. Their assumption is based on the fact that, during that period, the Senate rules allowed the use of a motion called "the previous question". During the debate on this subject in previous years, the point was discussed, and it appears that the debate would have established in the mind of a reasonable person that there was no limitation on debate in the Senate during this period. Nevertheless, some newspaper editorials and columnists apparently still labor under the misapprehension that "the previous question" which existed in the Senate between 1789 and 1806, was a motion to end debate. For this reason, I believe it would be well to review this matter to some extent so that any lingering doubts that there was a limitation of debate in the Senate between the years of 1789 and 1917 will be dispelled.

For all the attention they have been given, it appears that the comments on "the previous question" in "Robert's Rules of Order" have not been presented in debate on this subject previously. The passage to which I refer appears on page 117 of "Robert's Rules of Order Revised", Seventy-fifth Anniversary Edition, and I quote:

"NOTE ON THE PREVIOUS QUESTION.--Much of the confusion heretofore existing in regard to the Previous Question has arisen from the great changes which this motion has undergone. As originally designed, and at present used in the English Parliament, the previous question was not intended to suppress debate, but to suppress the main question, and therefore, in England, it is always moved by the enemies of the measure, who then vote in the negative. It was first used in 1604, and was intended to be applied only to delicate questions; it was put in this form, "Shall the main question be put?" and being negatived, the main question was dismissed for that session. Its form was afterwards changed to this, which is used at present, "Shall the main question be NOW put?" and if negatived the question
was dismissed, at first only until after the ensuing debate was over, but now, for that day. The motion for the previous question could be debated; when once put to vote, whether decided affirmatively or negatively, it prevented any discussion of the main question, for, if decided affirmatively, the main question was immediately put, and if decided negatively (that is, that the main question be not now put), it was dismissed for the day.

"Our Congress has gradually changed the English Previous Question into an entirely different motion, so that, while in England, the mover of the previous question votes against it, in this country he votes for it. At first the previous question was debatable; if adopted it cut off all motions except the main question, which was immediately put to vote; and if rejected the main question was dismissed for that day as in England. Congress, in 1805, made it undebatable. In 1840 the rule was changed so as not to cut off amendments but to bring the House to a vote first upon pending amendments, and then upon the main question. In 1848 its effect was changed again so as to bring the House to a vote upon the motion to commit if it had been made, then upon amendments reported by a committee, if any, then upon pending amendments, and finally upon the main question. In 1860 Congress decided that the only effect of the previous question, if the motion to postpone were pending, should be to bring the House to a direct vote on the postponement—thus preventing the previous question from cutting off any pending motion. In 1860 the rule was modified also so as to allow it to be applied if so specified to an amendment or to an amendment of an amendment, without affecting anything else, and so that if the previous question were lost the debate would be resumed. In 1880 the rule was further changed so as to allow it to be applied to single motions, or to a series of motions, the motions to which it is to apply being specified in the demand; and 30 minutes’ debate, equally divided between the friends and the enemies of the proposition, was allowed after the previous question had been ordered, if there had been no debate previously. In 1890 the 30 minutes' debate was changed to 40 minutes. The previous question now is simply a motion to close debate and proceed to voting on the immediately
pending question and such other pending questions as it has been ordered upon."

From this discussion it should be clear that between 1789 and 1806, "the previous question" used in the Senate was not intended to suppress debate, but to suppress the main question, and, therefore, to avoid a vote on a particular piece of legislation.

In 1816, the House of Representatives debated the issue of free debate. They adopted a strict cloture by a perversion of the meaning of "the previous question".

Mr. Gaston, in speaking in favor of free debate, pointed out that the original purpose of "the previous question" was to postpone one subject in order to take up another. In other words, it was simply a demand that the House should first announce whether it was then expedient to decide the question under debate or to turn temporarily to other business.

The Continental Congress had followed this procedure and had made proper use of "the previous question".

Over the years after the first Congress, there were attempts to pervert the meaning of "the previous question". That was the reason for the debate in 1816. Mr. Gaston pointed out at that time that the House, in attempting to change the historic and true meaning of "the previous question", was abandoning its true principles.

On this particular question the elder Senator Henry Cabot Lodge, said in 1893, and I quote:

"There never has been in the Senate any rule which enabled the majority to close debate or compel a vote. "The previous question", which existed in the earliest years and was abandoned in 1806, was "the previous question" of England, and not that with which everyone is familiar today in our House of Representatives. It was not in practice a form of cloture, and it is, therefore, correct to say that the power of closing debate in the modern sense has never existed in the Senate."

Through the years the Senate has debated the pros and cons of unlimited debate, but it remains a fact that, for 125 years from 1789 to 1917, the Senate had no cloture rule at all. During that
time the parade of great men to the Senate continued, and most of them were firm advocates of free debate. Since 1917, we have had a two-thirds requirement for cloture in one form or another.